



CenturyLink™

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EX PARTE NOTICE

May 9, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *CenturyLink Broadband Deployment Semi-Annual Report*, WC Docket No. 10-110

Dear Ms. Dortch:

On Monday, May 7, 2019, Craig Brown, Tom Freeberg, Jeff Glover, Dan Sorensen, Michael Underwood (all by phone) and I, on behalf of CenturyLink, and Patrick Halley, with Wilkinson Barker Knauer, LLP, met with Madeleine Findley, Daniel Kahn, Terri Natoli, Alex Minard, and Pam Megna of the Wireline Competition Bureau (“Bureau”) and Joel Rabinowitz of the Office of General Counsel, regarding the above-captioned matter.

In this meeting, we discussed the different types of universal service support the company received in the former Qwest operating territory between April 1, 2011 and April 1, 2018, and whether any adjustments should be made to the broadband deployment totals that CenturyLink reported in connection with the Commission’s Order approving the transfer of control of Qwest to CenturyLink, in light of that universal service support.¹ Given the relevant Commission orders, CenturyLink reiterated that the only locations that should be excluded from the broadband deployment percentages reported to the Commission under the CenturyLink-Qwest merger commitments are those funded with CAF I Incremental Support or CAF II support. CenturyLink is providing as attachments to this notice deployment data requested by Bureau staff and answers to questions they have posed.

To determine compliance with the appropriate interpretation of CenturyLink’s merger commitments, it is important to understand how those commitments relate to the Commission’s

¹ *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Report and Order, 26 FCC Rcd 4194 (2011) (*CenturyLink-Qwest Merger Order*).

universal service orders, and particularly the *Transformation Order*.² Of course the starting point for this analysis is the language of the commitments in the *CenturyLink-Qwest Merger Order*. CenturyLink explained that the Commission approved the CenturyLink-Qwest merger subject to the conditions set forth in Appendix C of the Order.³ The Order did not impose any requirements on the merged company beyond those included in Appendix C, which enumerated the voluntary commitments that had been offered by CenturyLink and Qwest. Those commitments were accepted as conditions for the Commission's approval of the merger, including the seven-year commitments to upgrade and expand broadband availability in legacy Qwest territory. They did not preclude CenturyLink from counting toward its broadband deployment commitments legacy Qwest locations in areas receiving legacy universal service support.⁴

This conclusion is not negated by a statement in the *CenturyLink-Qwest Merger Order* that CenturyLink's broadband deployment and adoption commitments constituted public interest benefits, in part, because they "rely on private investment, and do not rely on public funding sources such as universal service support."⁵ When considered in light of the ordering clauses and the text of the commitments themselves, that statement should be read as descriptive and not prescriptive. Federal universal service support at the time did not require or even explicitly support broadband and it was treated for accounting and tax purposes as revenue not contributions to capital investment. In any case, this sentence in the *Merger Order* did not prohibit CenturyLink from counting a location toward its merger commitments simply because that location was in an area receiving universal service support.

Seven months after approving the merger, the Commission substantially transformed the federal high-cost universal service programs. In the *Transformation Order*, the Commission took three key steps relevant here. First, the Commission froze legacy high-cost support at end of 2011 levels. It required recipients of Frozen Support to use one-third of the total amount of that support in 2013 "for building and operating broadband-capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor."⁶ It further required recipients to do the same

² *Connect America Fund*, WC Docket 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), subsequent history omitted (*Transformation Order*)

³ See *CenturyLink-Qwest Merger Order* ¶ 45 ("as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), CenturyTel, Inc. d/b/a CenturyLink shall comply with the conditions set forth in Appendix C of this Order.")

⁴ Indeed, Appendix C's broadband commitment levels were based on the total number of living units in legacy Qwest territory (i.e., approximately 16.5 million), even though nearly all those locations were in areas receiving federal universal service support at that time. Appendix C also projected that CenturyLink's broadband deployment commitments would result in 4 million living units in Qwest territory gaining access to broadband service at speeds of 5 Mbps or higher downstream. Again, this projection was based on the total number of living units in Qwest areas, nearly all of which was receiving legacy universal service support.

⁵ *CenturyLink-Qwest Merger Order* ¶ 37.

⁶ *Transformation Order* ¶ 149.

with two-thirds of the Frozen Support they received in 2014, and all of that support in 2015 and any subsequent years.⁷ The Commission subsequently reiterated that carriers could use their Frozen Support to “maintain and operate existing” networks.⁸ The Commission also clarified that the obligation to use Frozen Support for broadband applied to carriers at the holding company level.⁹

CenturyLink explained in the meeting that it made the certifications regarding the use of Frozen Support on a holding company basis, and that its operating expenses for broadband in areas substantially unserved by competitors substantially exceeded the amount of Frozen Support. It further noted that a comparatively small amount of CenturyLink’s frozen support was attributable to the Qwest serving areas subject to the merger commitment. Notably, unlike for CAF I Incremental Support, the *Transformation Order* included no restriction on the use of Frozen Support to meet merger commitments. Accordingly, CenturyLink believes that its receipt and use of Frozen Support should not have any bearing on the broadband deployment commitment in the *CenturyLink-Qwest Merger Order*.

Second, the *Transformation Order* established the structure and detailed rules for the CAF Phase I Incremental Support program – a one-time \$300 million non-recurring broadband deployment program. Unlike Frozen Support, the Incremental Support program imposed specific broadband deployment obligation in unserved areas,¹⁰ and the Commission clearly stated that “that CAF Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.”¹¹ In addition, CAF I Incremental Support funding was treated as a contribution to capital for accounting and tax purposes, unlike legacy universal service high-cost support. Accordingly, CenturyLink excluded such locations in its broadband deployment calculations used for the semi-annual progress reports it has filed with the Commission pursuant to the *CenturyLink-Qwest Merger Order*.

Finally, the *Transformation Order* created the overall structure for the CAF Phase II program, to be subsequently implemented by the Wireline Competition Bureau, to establish “a framework for extending broadband to millions of unserved locations over a five-year period, including households, businesses, and community anchor institutions, while sustaining existing voice and broadband services.”¹² Over the course of the next few years, the Commission and Bureau made a number of decisions regarding the structure of the CAF II program. Importantly for the purpose of determining how to treat the program in connection with the CenturyLink-Qwest Merger commitments, the CAF II

⁷ CenturyLink only received Frozen Support in 2015 and later years in a single state with legacy Qwest service territory—Wyoming.

⁸ *Connect America Fund*, WC Docket 10-90, Order, 28 FCC Rcd 14887 ¶ 10 (2013).

⁹ *Id.* at ¶ 11.

¹⁰ “We intend for CAF Phase I to enable additional deployment beyond what carriers would otherwise undertake, absent this reform. Thus, consistent with our other reforms, we will require carriers that accept incremental support under CAF Phase I to meet concrete broadband deployment obligations.” *Transformation Order* ¶ 137.

¹¹ *Transformation Order* ¶ 105, Figure 1, ¶ 146.

¹² *Id.* at ¶ 156.

program resembles Incremental Support and differs from Frozen Support and other USF programs in several critical aspects: (1) it imposes substantial explicit broadband deployment obligations; (2) support levels were calculated using a cost model that explicitly covered the capital expenditures for deployment; and (3) there are specific penalties for failing to meet the deployment obligations.

Based on these similarities between Incremental Support and CAF II support, and the differences between those two programs and other forms of universal service support, CenturyLink has excluded locations receiving CAF II support from its calculations for the *CenturyLink-Qwest Merger Order*. Those two programs explicitly target funds toward the construction of broadband networks, in contrast with most other federal and state universal service support programs, which have provided additional revenue to help fund ongoing operations where customer revenue is insufficient to support universal service. CenturyLink believes that the receipt of other forms of universal service support, including CAF I Frozen Support and the legacy programs from which it was created, and other universal service programs, such as CAF I Inter-carrier Compensation support or Lifeline funding should require additional locations to be excluded from the broadband deployment totals.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice is being filed in the above-referenced docket. Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey D. Lang".

Copies via email to: Madeleine Findley
Daniel Kahn
Terri Natoli
Alex Mindard
Pam Megna
Joel Rabinowitz